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JAIS CHEE & ORS

v.

**SUPERINTENDENT OF LANDS & SURVEYS KUCHING
DIVISION, KUCHING**

B

COURT OF APPEAL, PUTRAJAYA
MOHAMED APANDI ALI FCJ
ABDUL AZIZ ABDUL RAHIM JCA
DAVID WONG DAK WAH JCA

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[CIVIL APPEAL NO: Q-01-724-2011]
29 JANUARY 2014

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LAND LAW: *Acquisition of land - Compensation - Award by Superintendent of Lands and Survey Department - Dispute as to calculation of compensation - Appeal to High Court - Notices issued under s. 48 Sarawak Land Code - Inquiry held nine years later - Delay in compensation - Valuation date - Whether valuation date depends on when notice issued - Consideration of - Whether adequate compensation given to appellants - Whether art. 13 of the Federal Constitution infringed - Whether s. 60(1) Sarawak Land Code to be read with art. 13 of the Federal Constitution*

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WORDS & PHRASES: *“adequate compensation” - Federal Constitution, art. 13 - Meaning of - Land acquisition - Compensation - Whether compensation to be paid within a reasonable time frame - Whether s. 60(1) Sarawak Land Code to be read with art. 13 of the Federal Constitution*

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This was an appeal against the decision of the High Court wherein the learned judge refused to increase the awards given by the Superintendent of Lands and Survey Department (‘Superintendent’) for the acquisition of Lot 51 Bako Town District (‘Lot 51’) and Lot 685 Block 2 Muara Tebas Land District (‘Lot 685’). On 3 October 1996, relevant notices were issued under s. 48 of the Sarawak Land Code in respect of Lot 51 and Lot 685 and on 28 October 2005, notices were issued under s. 49 of the Sarawak Land Code which required the Superintendent to notify the owners of the compulsorily acquired land. The appellants made the relevant claims for compensation to the Superintendent and on 24 November 2005, an inquiry was held at the Lands and Survey Department, Kuching. As recommended by the respondent’s valuer (‘Pn Haslinda’), the Superintendent awarded the amount of RM32,040 and

RM464,640 for Lot 51 and Lot 685 respectively. *Vide* her report, Pn Haslinda stated that in accordance with s. 60(1)(a) of the Sarawak Land Code, the date 3 October 1996 was taken as the date of valuation but she recommended that the date of the valuation report was the date of valuation, *ie*, 12 August 2005 due to the time frame. Dissatisfied with the compensation awarded, the appellants made a reference to the High Court under s. 56 of the Sarawak Land Code. The appellants submitted that the relevant date for valuing the compensation amount should be 12 August 2005. Pursuant to that, the appellants called their own valuer who had valued Lot 51 and Lot 685 at RM52,065 and RM760,320 respectively, making a total compensation of RM812,385. The respondent's valuer, however, adopted the valuation of Pn Haslinda and used 3 October 1996 as the valuation date. The High Court Judge held that the market value at the date of posting of the declaration, *ie*, 3 October 1996 which was made under s. 48 of the Sarawak Land Code should be taken into consideration in determining the amount of compensation to be awarded.

**Held (allowing appeal; setting aside decision of High Court)
Per David Wong Dak Wah JCA delivering the judgment of
the court:**

- (1) There is no provision in the Sarawak Land Code stating as to when an inquiry into the compensation amount to be paid is to be held and when that compensation amount is to be paid. On the facts, there had been a lapse of nine years since the s. 48 posting before the inquiry hearing was held. The effect of this s. 48 posting is that the appellant ceased to have any legal or beneficial interests in the acquired lands. (para 17)
- (2) The appellant's request that the compensation amount to be paid for the acquisition was to be premised on the date of inquiry which was held on 24 November 2005 was not only reasonable but was consistent with the spirit of art. 13 of the Federal Constitution which commands 'adequate compensation' to be given to the appellants. The word 'adequate' can only mean what is fair and reasonable compensation and in the context of this case, the value should be that as at 24 November 2005. What is 'fair and reasonable' compensation cannot be the compensation amount awarded by the respondent (*Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman*; foll). (paras 20 & 24)

- A (3) Section 60(1)(a) of the Sarawak Land Code read with art. 13 of the Federal Constitution demand that the s. 51 inquiry for compensation to be paid was to be conducted within a reasonable time frame so that an adequate compensation can be ascertained. On the facts, the s. 51 inquiry was not
- B conducted until some nine years later. In order not to infringe art. 13 of the Federal Constitution, the adequate compensation was the amount valued as at 12 August 2005. Further, the valuation report was prepared as at 12 August 2005 and this report was not challenged (*Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors*; foll). (paras 28 & 30)
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[The compensation amount of the two acquired lands was to be in the sum of RM812,385. As a sum of RM496,680 had been paid, a balance of RM315,705 remained unpaid. As such, judgment was given to the

D *appellants in the sum of RM315,705 with interests at the rate of 5% per annum from the date of award, ie, 24 November 2005 until full and final payment of the same.]*

Bahasa Malaysia Translation Of Headnotes

- E Ini adalah rayuan terhadap keputusan Mahkamah Tinggi di mana yang arif hakim tidak meningkatkan jumlah award yang diberi oleh Penguasa Jabatan Tanah dan Ukur ('Penguasa') bagi pengambilan tanah Lot 51 Bako Town District ('Lot 51') dan Lot 685 Block 2 Muara Tebas Land District ('Lot 685'). Pada 3 Oktober 1996,
- F notis-notis berkenaan telah dikeluarkan di bawah s. 48 Kanun Tanah Sarawak berkenaan Lot 51 dan Lot 685 dan pada 28 Oktober 2005, notis-notis dikeluarkan di bawah s. 49 Kanun Tanah Sarawak di mana Penguasa perlu memaklumkan pemilik-pemilik mengenai tanah yang telah diambil secara wajib. Perayu-perayu membuat tuntutan bagi pampasan kepada Penguasa dan
- G pada 24 November 2005, satu siasatan telah diadakan di Jabatan Tanah dan Ukur, Kuching. Seperti yang dicadangkan oleh penilai responden ('Pn Haslinda'), penguasa telah memberikan award sebanyak RM32,040 dan RM464,640 bagi Lot 51 dan 685
- H masing-masing. Melalui laporannya, Pn Haslinda menyatakan bahawa berikutan s. 60(1)(a) Kanun Tanah Sarawak, tarikh 3 Oktober 1996 diambil sebagai tarikh penilaian tetapi beliau mencadangkan supaya tarikh laporan penilaian adalah tarikh penilaian, iaitu, 12 Ogos 2005 disebabkan jangka masa. Tidak
- I berpuas hati dengan award pampasan tersebut, perayu-perayu membuat rujukan ke Mahkamah Tinggi di bawah s. 56 Kanun Tanah Sarawak. Perayu-perayu menghujah bahawa tarikh sepatutnya untuk menilai pampasan adalah 12 Ogos 2005. Dengan

itu, perayu-perayu memanggil penilai mereka yang telah menilai Lot 51 dan Lot 685 masing-masing bagi jumlah RM52,065 dan RM760,320 menjadikan jumlah pampasan sebanyak RM812,385. Penilai responden, walau bagaimanapun, menggunakan penilaian Pn Haslinda dan menggunakan 3 Oktober 1996 sebagai tarikh penilaian. Hakim Mahkamah Tinggi memutuskan bahawa nilai pasaran pada tarikh deklarasi, iaitu, 3 Oktober 1996 yang dibuat di bawah s. 48 Kanun Tanah Sarawak diambil sebagai pertimbangan dalam menentukan jumlah pampasan yang akan diberikan.

Diputuskan (membenarkan rayuan; mengesahkan keputusan Mahkamah Tinggi)

Oleh David Wong Dak Wah HMR menyampaikan penghakiman mahkamah:

- (1) Tiada peruntukan dalam Kanun Tanah Sarawak yang menyentuh tentang bilakah siasatan terhadap jumlah pampasan untuk dibayar boleh diadakan dan bilakah pampasan tersebut perlu dibayar. Berdasarkan fakta, terdapat kelewatan selama sembilan tahun sejak pemberitahuan s. 48 sebelum pendengaran siasatan diadakan. Kesan pemberitahuan s. 48 adalah bahawa kepentingan undang-undang dan benefisial perayu-perayu terhadap tanah-tanah yang diambil itu telah pun luput.
- (2) Permintaan perayu-perayu bahawa jumlah tuntutan untuk dibayar bagi pengambilan tanah adalah berdasarkan tarikh siasatan yang diadakan pada 24 November 2005 bukan sahaja munasabah tetapi berpatutan dengan kehendak perkara 13 Perlembagaan Persekutuan yang memperuntukkan 'pampasan memadai' untuk diberikan kepada perayu-perayu. Perkataan 'memadai' hanya boleh memberi makna berkenaan pampasan yang wajar dan munasabah dan dalam konteks kes ini, nilai sepatutnya adalah sehingga 24 November 2005. Pampasan yang 'wajar dan munasabah' tidak boleh bermakna nilai pampasan yang diberikan oleh responden (*Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman*; diikuti).
- (3) Seksyen 60(1) Kanun Tanah Sarawak apabila dibaca bersama-sama dengan perkara 13 Perlembagaan Persekutuan memperuntukkan bahawa siasatan di bawah s. 51 bagi pampasan untuk dibayar mesti dilakukan dalam jangka masa yang munasabah supaya pampasan memadai boleh dipastikan. Berdasarkan fakta, siasatan di bawah s. 51 tidak diadakan sehingga sembilan tahun kemudian. Bagi memastikan supaya

A perkara 13 Perlembagaan Persekutuan tidak dilanggar, pampasan memadai adalah jumlah yang dinilai setakat 12 Ogos 2005. Tambahan, laporan penilaian telah disediakan setakat 12 Ogos 2005 dan laporan ini tidak dicabar (*Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors*; diikuti).

B [jumlah pampasan bagi kedua-dua tanah yang diambil adalah RM812,385. Memandangkan jumlah sebanyak RM496,680 telah pun dibayar, baki RM315,705 masih belum dibayar. Oleh itu, penghakiman diberi kepada perayu-perayu bagi jumlah RM315,705 dengan faedah
C pada kadar 5% setahun dari tarikh award, iaitu 24 November 2005 sehingga penyelesaian bayaran penuh.]

Case(s) referred to:

B Surinder Singh Kanda v. The Government Of The Federation Of Malaysia [1962] 1 LNS 14 PC (**fol**)

D *Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman* [2010] 9 CLJ 810 CA (**fol**)

Keng Kien Hock v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia & Ors [2007] 5 CLJ 171 CA (**refd**)

Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors [2005] 4 CLJ 169 CA (**fol**)

E *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd* [2006] 3 CLJ 177 FC (**refd**)

Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors & Another Case [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224 SC (**refd**)

F *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors* [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 PC (**fol**)

Pemungut Hasil Tanah, Daerah Barat Daya (Balik Pulau), Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC (**refd**)

Legislation referred to:

Federal Constitution, art. 13(1)

G Land Acquisition Act 1960, ss. 8, 29(1), 53

Sarawak Land Code (Cap 81), ss. 47, 48, 49, 51, 56, 60(1)(a)

Other source(s) referred to:

Prof Dr Shad Saleem Faruqi, *Document of Destiny - The Constitution of the Federation of Malaysia*, 2008 edn, Star Publications (M) Bhd, p 21

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For the appellant - Siti Emiliana (Arthur Lee Cheng Chuan with her); M/s Arthur Lee, Lin & Co

For the respondent - Mc Willyn Jio; AG's Chambers

I [Appeal from High Court of Sabah and Sarawak, Kuching; Land Reference No: 15-2-2010-II & 15-3-2010-III]

Reported by Kumitha Abd Majid

JUDGMENT

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David Wong Dak Wah JCA:

Introduction

[1] This appeal is against the decision of the High Court in which the learned judge in respect of two consolidated land references refused to increase the awards given by the Superintendent of Lands and Survey Department Kuching for the acquisition of Lot 51 Bako Town District and Lot 685 Block 2 Muara Tebas Land District.

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Background Facts

[2] The Minister on 3 October 1996 *vide* Gazette Notification No. 2910 issued the relevant notices in respect of the above-mentioned lots under s. 48 of the Sarawak Land Code. Such notices are required in law to inform the owners that their lands are acquired for public purposes. There is no dispute that the lands were used for public purposes.

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[3] On 28 October 2005, notices were issued under s. 49 of the Sarawak Land Code which in substance requires the Superintendent of Lands and Survey Department to notify the owners of the compulsorily acquired land that the state government intends to take possession of the same and the owners may make their claims for compensations before the Superintendent of Lands and Survey Department at the time and place set out in the notices.

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[4] The appellants had made the relevant claims for compensations to the Superintendent of Lands and Survey Department and on 24 November 2005 an inquiry was held at the Lands and Survey Department, Kuching. One Puan Haslinda bte Hamdan was called by the respondent as the valuer to testify on the valuation of the lands and in her report she stated as follows:

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(...) the subject land is under section 48 of the Land Code *vide* GN No 2910 dated 03.10.1996. In accordance with section 60(1)(a) of the Land Code this is the date of valuation ie at the date of section 48 of the Land Code but I have recommended (sic) that the date of this report is the date of valuation ie, 12.08.2005 due to the time frame. At this date, I am of the opinion that the fair and reasonable market value is of RM32,040 and RM464,640 for Lot 51 and Lot 658 respectively.

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A [5] The superintendent then awarded the amount as recommended by Puan Haslinda bte Hamdan. Not satisfied with the compensation, the appellants made a reference to the High Court under s. 56 of the Sarawak Land Code where the High Court is empowered to vary the amount of compensation awarded.

B **Land Reference Before The Learned Judge**

C [6] Learned counsel for the appellants had submitted that the relevant date for valuing the compensation amount should be that as recommended by Puan Haslinda bte Hamdan and that is, 12 August 2005. Pursuant to that, the appellants called their own valuer (OW2) who had valued Lot 51 and Lot 658 at RM52,065 and RM760,320 respectively making a total compensation of RM812,385.

D [7] The respondent called its valuer in RW1 who had adopted the valuation of Puan Haslinda bte Hamdan and used 3 October 1996 as the valuation date. As noted by the learned judge the differences between the two valuations are RM20,025 for Lot 51 and RM295,689 for Lot 658.

E [8] The learned judge's rationale in refusing to disturb award can be seen in this paragraph of his grounds:

F Adopting the said 'recommended date (12.08.2005) would appear clearly advantageous, and in the context the Objectors can hardly be blamed for expounding an argument supportive of their stand based on that date. That, *inter alia*, the market value at the date of posting of the declaration made under section 48 (3 October 1996) shall be taken into consideration in determining the amount of compensation to be awarded in these two cases (ie, the applicable law, section 60(1)(a)) is so glaringly clear (see also the cases cited by the Respondent, *Mohamad Noor bin Othman & Ors v. Haji Mohamed Ismail bin Hj Ibrahim & Ors* [1998] 3 MLJ 82 and *Lee Teng Siong v. Lee Kheng Lian & Ors* [2006] 5 MLJ 609), that in the face of the Respondent's valuation based on 3.10.1996 as the material date of valuation, and in the circumstances of the instant cases, it became incumbent upon the Objectors to do a valuation based on 3.10.1996 to prove, that the Superintendent's award arrived at in such a manner was *prima facie* inadequate.

I As the Objectors failed to do so, the Objectors have failed to discharge the aforesaid burden of proof. The Respondent's respective valuation based on the date of section 48 of the Sarawak Land Code in respect of the two Land Reference cases,

must therefore prevail ie for Lot 5 – RM32,040.00 at RM12.00 per square meter, and for Lot 685 – RM464,640.00 at RM11.00 per square metre. There shall be no order as to cost. **A**

Our Grounds Of Decision

[9] The starting point of our deliberation must be s. 60(1)(a) of the Sarawak Land Code which states as follows: **B**

(1) In determining the amount of compensation to be awarded for land resumed under this part, the court shall take part into consideration the following matters and no others: **C**

(a) the market value at the date of publication of notification under s. 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s. 48. **D**

[10] The learned judge found that the words are so crystal clear that he was duty bound to apply it and that is the date of valuation for the compensation amount is the date of s. 48 posting of the declaration, that is, 3 October 1996. **E**

[11] Learned judge also relied on the cases of *Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors & Another Case* [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224; [1998] 3 MLJ 82 where the then Supreme Court said this concerning interpreting words of statute: **F**

For it is trite law that where the words of a statute are clear there is no room for the Court to go beyond the expressed language of the statute.

[12] In recent times, the Federal Court in *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd* [2006] 3 CLJ 177 expressed the same sentiments: **G**

The primary duty of the Court is to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find another intention (see *Nathu Prasad v. Singhai Kepurchand* (1976) Jab LJ 340). Thus the duty of the Court, and its only duty, is to expound the language of a statute in accordance with the settled rules of construction and has nothing to do with the policy of any statute which it may be called upon to interpret (see *Vacker & Sons Ltd v. London Society of Compositors* (1913) AC117; *NKM Holdings Sdn Bhd v. Pan Malaysia Wood Bhd* (1986) 1 LNS 79. **H**
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- A [13] We have no reason to disagree with the principles of law expounded in the above quoted judgments. However when a statute needs to be interpreted in the context of the Federal Constitution, the court is duty bound to ensure that such statute or any part thereof does not contravene the clear words in the
- B Federal Constitution and if it does contravene, then that part of the statute must be struck down. The rationale is simply that the Federal Constitution is the supreme law of the country and that all laws, be it state laws or federal laws, are subject to it.
- C [14] The learned author Prof. Dr. Shad Saleem Faruqi in his book - *Document of Destiny - The Constitution of the Federation of Malaysia* 2008 edn. Star Publications (M) Bhd at p. 21 describes what a written constitution entails:
- D A written Constitution is the supreme and highest law of the land, the law of laws, the *grundnorm*. It is the law on which all other laws rest. It is special, higher legal status. It is the highest rule in the legal pyramid, the apex of hierarchy of norms. It is the law to which all other laws must conform and from which all other laws are ultimately derived. It is the ultimate source of all
- E legal authority. It provides the yardstick for testing the validity of all other laws.
- [15] In the context of this appeal the relevant article in the Federal Constitution is art. 13 which reads as follows:
- F (1) No person shall be deprived of property save in accordance with law.
- (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.
- G [16] What this article requires is simply that owners of all compulsorily acquired lands be paid 'adequate compensation' by the relevant authorities. The issue which confronts us now is what is 'adequate compensation'?
- H [17] Before we deal with that issue, we should remind ourselves of the salient facts here which are these. There is no provision in the Sarawak Land Code stating as to when an inquiry into the compensation amount to be paid is to be held and when that compensation amount is to be paid. In this case, there has been
- I a lapse of nine years since the s. 48 posting before the inquiry hearing was held. The effect of this s. 48 posting is simply that the appellant ceases to have any legal or beneficial interests in the acquired lands.

[18] Learned counsel for the appellant in his supplementary submission refers us to the Federal Court case of *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35 where the facts are these. The relevant land was acquired through a s. 8 declaration under the Land Acquisition Act dated 25 April 1974. However the inquiry into the compensation amount to be paid to the respondent there was only held seven years later. An application was made by the respondent to quash the award of the collector on the ground of the unreasonable delay. The application was sustained at the High Court and on appeal to the then this is what Supreme Court said through Salleh Abas CJ (Malaya):

We think that it is sufficient to decide this appeal on the basis of a simpler question, ie, whether or not in view of the long delay resulting in an injustice to the land owner the acquisition was done in accordance with the law (the Land Acquisition Act). Only in the circumstances that it is not done in accordance with the Act can we say that the acquisition is contrary to the requirement of clause (1) of Article 13 of the Federal Constitution which requires that to be lawful every deprivation of property must be done in accordance with the law.

Every exercise of statutory power must not only be in conformity with the express words of the Statute but above all must also comply with certain implied legal requirements. The court has always viewed its exercise as an abuse and therefore treats it as illegal where the exercise is done for an inadmissible purpose or on irrelevant grounds or without regard to relevant consideration or with gross unreasonableness (*de Smith's*, 4th Edition, p. 323; and *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223).

...

What then is the 'convenient speed'? In our view it must 'as soon as possible' or 'within a reasonable time', and not 'as late as possible'. Obviously what amounts to 'convenient speed' must vary from case to case and in our judgment seven years delay is certainly not a 'convenient speed' as it is so far outside the normal period of time that no reasonable authority could ever regard it as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal. (*Regina v. St. Albans Crown Court, Ex-parte Cinnamond* [1981] QB 480 and *Regina v. Tottenham Justices, Ex-parte Dwarkados Joshi* [1982] 1 WLR 631.)

A [19] The case of *Keng Kien Hock v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia & Ors* [2007] 5 CLJ 171; [2007] 5 MLJ 611 was also referred to by learned counsel for the appellant where the learned judge held *inter alia* that:

B Section 54(2) of the Interpretation Acts 1948 and 1967 provides that where no time is prescribed within which anything shall be done, that thing shall be done with convenient speed and as often as the prescribed occasion arises. The term “a convenient speed” is not defined by any statute. However, the definition and meaning of “a convenient speed” is not defined by any statute.

C The definition and meaning of “a convenient speed” in the context of the scope of section 2 of the Act can be found from the judicial pronouncement made in earlier decided cases ...

... We are of the view that in order to arrive at a correct finding of fact as to whether the legal obligation was carried out with all convenient speed under the circumstances of such particular case, it shall be the duty of the trial judge to look into all the affidavit evidence adduced by the parties in the proceedings ...

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[20] The recent decision of this court in *Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman* [2010] 9 CLJ 810, through the judgment of Hishamudin Mohd Yunus JCA provides helpful guidelines. The facts there are these. The appellants’ lands were acquired by the State Authority of Kedah on 25 May 1995 pursuant to provisions of the Land Acquisition Act. Soon after the acquisition, an inquiry was held to determine the compensation amount to be paid. On 17 December 1995, the Land Administrator filed in his office the Form G stating his award for the lands. Soon after the filing of Form G, the Land Administrator though there was no evidence was deemed to have served Form H on the appellants.

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[21] After the service of Form H, the provision of s. 29 of the Land Acquisition Act comes into play. It states as follows:

Payment of compensation or deposit in court

H 29 (1) After a notice of award in Form H has been served in the manner prescribed by s. 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each awarded entitled thereto unless:

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(a) There shall be no person competent to receive such payment;

- (b) The person entitled thereto does not consent to receive the amount awarded; or A
- (c) There is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof. B

[22] What had happened in that case was that no payment was made to the appellants there until some nine years later. In view of the delay, the appellants took out an application in court to declare the acquisition as null and void and pray for the return of the lands. The application did not find favour in the High Court but on appeal to the Court of Appeal, this court sustained the appellants' application. The Court of Appeal cited with approval the *dicta* of Lord Keith of Kinkel in *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors* [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 which reads as follows: C D

Delay contrary to the express or implied statutory requirements is in itself a ground invalidating proceedings which follow such delay, without the necessity of any inference that the acquisition has been abandoned. E

Applying these principles, their Lordships are of opinion that in this case the delay of 7 years between G. N. 89 and the appellant's notice of inquiry on March 22, 1979 had the effect that the latter was given in contravention of the statutory requirements and did not constitute a valid exercise of power. No attempt was made to justify or explain the delay. F

[23] The Court of Appeal then held that there was non-compliance of s. 29(1) of the Land Acquisition Act in that payments were not made 'as soon as may be' and as a result of which it had contravened art. 13(1) of the Federal Constitution. Accordingly the acquisition was rendered null and void and the relevant lands were ordered to be returned. G

[24] Reverting to the appeal at hand, all the appellants only want is that the compensation amount to be paid for the acquisition is to be premised on the date of inquiry which was held on 24 November 2005. We find that request not only reasonable but also would be consistent with the spirit of art. 13 which commands 'adequate compensation' to be given to the appellants. The words 'adequate compensation' must be given their proper interpretation. The word 'adequate' can only mean what is fair and H I

- A reasonable compensation and in the context of this case the value should be that as at 24 November 2005 and calculated by OW1. What is 'fair and reasonable' compensation cannot by any stretch of imagination the compensation amount awarded by the respondent. The rationale in *Ismail Bakar & Ors (supra)* similarly applies with full force in this appeal.
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- [25] We are fully aware of the wordings in s. 60 of the Sarawak Land Code dictate that the 1996 valuation is to be used as the compensation to be paid. As we mentioned above, all statutes be in federal or state must be read having regard to the Federal Constitution and in this case, art. 13.
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- [26] In *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14; [1962] MLJ 169, this is what Lord Denning when delivering the advice of the Board said:
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In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The Court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution.

- E [27] This Court in *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169, was faced with a piece of state legislation which gave the state government a discretion whether or not to pay compensation for acquisition of landed property which would contravene art. 13 of the Federal Constitution. This is how Gopal Sri Ram JCA (as he then was) resolved the inconsistency:
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The way in which s. 12 is to be brought into conformity with the Constitution is to make it yield to art. 13(2) which reads:

- G 13(2) No law shall provide for compulsory acquisition or use of property without adequate compensation, That is achieved by not reading the words "the State Authority may grant compensation therefor" as conferring a discretion on the State Authority whether to grant compensation or not. For otherwise it would render s. 12 of the 1954 Act violative of art. 13(2) and void because it will be a law that provides for the compulsory acquisition of property without adequate compensation. A statute which confers a discretion on an acquiring authority whether to pay compensation or not enables that authority not to pay any compensation. It is
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therefore a law that does not provide for the payment of adequate compensation and that is why s. 12 will be unconstitutional. Such a consequence is to be avoided, if possible, because a Court in its constitutional role always tries to uphold a statute rather than strike it down as violating the Constitution. As Jeeva Reddy J said in *State of Bihar and Others v. Bihar Distillery Ltd.* AIR [1997] SC 1511:

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The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should to try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it.

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How then do you modify s. 12 to render it harmonious with art. 13(2)? I think you do that by reading the relevant phrase in s. 12 as “the State Authority shall grant adequate compensation therefor.” By interpreting the word “may” for “shall” and by introducing “adequate” before compensation, the modification is complete. I am aware that ordinarily we, Judges, are not permitted by our own jurisprudence, to do this. But here you have direction by the supreme law of Federation that such modifications as the present must be done. That is why we can resort to this extraordinary method of interpretation

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E

[28] Applying the above principles set out above, we are of the considered view that s. 60(1)(a) of the Sarawak Land Code read with art. 13 of the Federal Constitution demands that the s. 51 inquiry for compensation to be paid be conducted within a reasonable time frame so that an ‘adequate compensation’ can be ascertained. In the case at hand, the s. 51 inquiry was not conducted until some nine years later. In order not to infringe art. 13 of the Federal Constitution, we are constrained to find that the ‘adequate compensation’ to be the amount valued as at 12 August 2005.

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[29] It is not insignificant that the respondent’s own valuer had opined at the inquiry that the fair compensation amount to be paid should be that as valued as at 12 August 2005. Her view as such corroborates our stand on what is adequate compensation in the circumstance of this case.

H

I

A [30] As mentioned earlier, the appellant had prepared a valuation report as at 12 August 2005 at the inquiry. This report was not challenged at all, hence we accept that report (see p. 118 of the record of appeal Part C Vol. 1) as the appropriate compensation to award to the appellant.

B
Conclusion

[31] For reasons stated above, we allow this appeal, set aside the judgment of the High Court and find that the compensation amount of the two acquired lands to be in the sum of
C RM812,385.

[32] As a sum of RM496,680 had been paid to the appellant, a balance of RM315,705 remains unpaid. In the circumstance, we give judgment to the appellant in the sum of RM315,705 with
D interests at the rate of 5% per annum from the date of award (that is 24 November 2005) until full and final payment of the same. We further give costs to the appellant in the sum of RM25,000. Order accordingly.

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